



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Office of the Solicitor

Pending Litigation Address: All Other correspondence:
P.O. Box 15667 Box 8
Arlington, Virginia 22215 Washington, D.C. 20231

July 8, 1998

Mr. Carl Malamud
President, Internet Multicasting Service
4875 Eisenhower Street
Suite 250
Alexandria, VA 22304

SOLICITOR

JUL 28 1998

U.S. PATENT & TRADEMARK OFFICE

Dear Mr. Malamud

Re: Freedom of Information Act (FOIA) Request No. 98-192

This is in response to your FOIA request received by the Office of the Solicitor on June 9, 1998. Your request seeks the following:

"memorandum, email, meeting notes or other documents by the Commissioner of Patents and Trademarks or other staff members of the USPTO containing the phrase "the Malamud situation" or "Carl Malamud" pertaining to the requests by aforementioned Malamud that USPTO make their database available for free to all users on the Internet."

I am prepared to release 22 documents in response to your FOIA request.

The FOIA processing fee for the instant request is \$238.24. Your check should be made payable to the "Treasury of the United States." Upon receipt of payment, the documents will be forwarded to you.

Sincerely,

Danita Ingram
Paralegal Specialist
Box 8

U.S. Patent and Trademark Office
Washington, D.C. 20231
Ofc (703) 305-9035
Fax (703) 305-9373

check rec'd 7/28/98
\$238.24
docs. mailed 7/28/98
DRL

Gewehr, Wes

From: Myers, Jane
Sent: Thursday, May 07, 1998 7:15 PM
To: Maulsby, Richard
Cc: Wes Gewehr
Subject: New York Times Article

Hi Richard,

I had hoped to draft a response letter for your consideration, but have not been able to find the time to do so. So here are some facts that you may want to follow up on or at least file away for future reference.

1. PTO databases are not "created at taxpayers expense."
2. The 1995 Paperwork Reduction Act does not "mandate that Government make information available electronically." Rather, in accordance with OMB Circular No. A-130, it requires agencies to "use electronic media and formats...as appropriate and within budgetary constraints."
3. Malamud did not post the full text of "several years of the patent data base." Rather he posted less than 2 years.
4. The PTO did not object to his posting. However, we did refuse to supply him with free source data.

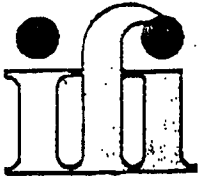
Additionally, providing PTO raw data would be useful only to a few users who could handle such large volumes of data. A "college student who has acquired 100 gigabytes of disc storage" would not have sufficient capacity to process the entire patent file. Neither is it technically feasible to download that amount of data via FTP.

The article cites a shortcoming of the IBM system because "only a summary can be searched for a key word." However, searching front page data (which the PTO's system allows) or front page data and claims data (which the IBM system allows) for patent data spanning over 20 years may meet the needs of many users, e.g., those looking for specific technical information or doing a preliminary screen of prior art. On the other hand, a database of full text spanning less than 2 years provides little more than a demonstration, and raw data, without searching capability, is useful to very few.

Thanks, Jane

Mr. Lehman

Cable Address "UNITERM"

Mr. Huth**IFI/PLENUM DATA CORPORATION**

102 EASTWOOD ROAD, SUITE D6F • WILMINGTON, NORTH CAROLINA 28403 • TEL (910) 392-0088 • FAX (910) 392-0240

September 12, 1995

FAX LETTER

Bruce Lehman
Assistant Secretary of Commerce
and Commissioner, Patents and Trademarks

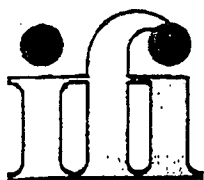
Dear Mr. Lehman:

The attached letter was faxed to Ms. Susan Katzen and Mr. Bruce McConnell of OMB. We are very much against the free service proposed by Carl Malamud and urge the PTO not to allow such a plan. Your support in this matter would be appreciated.

Sincerely,

Harry M. Allcock
Vice President

95 SEP 16 11:13 AM
TRADEMARKS
U.S. DEPT. OF COMMERCE

**IFI/PLENUM DATA CORPORATION**

Cable Address "UNITERM"

102 EASTWOOD ROAD, SUITE D6F • WILMINGTON, NORTH CAROLINA 28403 • TEL (910) 392-0088 • FAX (910) 392-0240

September 12, 1995

FAX LETTER

Bruce W. McConnell
Chief, Policy and Technology Branch
OMB
Washington, DC

Dear Mr. McConnell:

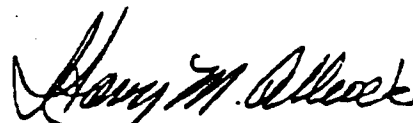
I have read with interest the news articles about making EDGAR DataBase searching available free and about the efforts of Internet Multicasting to force PTO to make patents available for free searching. From what I have been hearing from the "Malamud Press" I understand OMB has now agreed that they -- who are supposedly responsible for enforcing Circular A-130 (having written and issued it) -- are in favor of Mr. Malamud's proposal that patents be made available for free searching. As a minimum this seems a desecration of the law (Paperwork Reduction Act) and the Policy that OMB has promulgated. Such callous disregard of legality and principle is unbelievable on the part of the supposed enforcement agency.

I have been in the patent information services business for 34 years. My company obtains bibliographic patent tapes weekly from PTO and adds value to these tapes by expanding the titles of patents to disclose the use or what is novel about the patent; standardization of all assignment names; and updates of all US classifications currently and retrospectively back to 1950. Prior to the release of machine readable data from the PTO IFI keytaped the information from the "Official Gazette" and today we have computerized patent information available from 1950 to date. Our products are widely used and represent an investment of over \$30 million. We now depend on being able to purchase the magnetic tapes from the PTO at a price based on the cost of dissemination (pursuant, we understand to OMB Circular A-130) and on the government adhering to its policies on user fees and to the policies concerning making patent searching available through the 79 patent depository libraries and through the Public Search Room.

We are not a large business, but our patent Database is up on four online services and it is used in many countries throughout the world, thus, in a modest way, helping the U.S. trade balance.

If the PTO were to begin offering free patent searching it would have a serious negative effect on our business. We have relied for many years on what amounts to a partnership with the PTO, in fact we have supplied data to the PTO that was lost, and this has served the needs of patent searchers and helped the U.S. information services economy. The Internet does not change these realities, nor is it a reason to suddenly shift policies. We urge you to cease and desist from any attempts to promote or encourage PTO provision of free patent searching. Even though the Malamud service is full-text, its sponsorship by PTO would cause serious erosion of our business. Of course, if bibliographic data for multiple years were to be provided, that would be disastrous for IFI/ Plenum Data Corporation. We have built our business on hard work, skill, and business acumen. We would not like to see it destroyed by someone who has convinced OMB or PTO that all patent information should be free.

Sincerely,



Harry M. Allcock
Vice President



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

JAN - 4 1995

MEMORANDUM FOR Denise Michel
Senior Policy Advisor

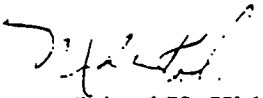
FROM: Acting Assistant Secretary of Commerce and
Acting Commissioner of Patents and Trademarks

SUBJECT: Comments on your December 22, 1994, Memo to
The Secretary

The attached message, which appears to be a joint effort of Carl Malamud and Gregory Aharonian, is being distributed on Internet. In addition to alerting you and others in the Department about this development, I also want to point out the following inaccuracies in the statement:

- (1) the USPTO did not object to his distribution of the patent full-text database -- our primary objection pertained to his request that the database be provided free of charge;
- (2) we actually encouraged Internet Multicasting Service (IMS) to distribute USPTO data via Internet consistent with our long-standing publishing policy of charging only the marginal cost of providing the databases -- we informed Malamud that his request for a free copy would have created an obvious inequity with other paying subscribers and the likely loss of about \$1,000,000 annually; and
- (3) contrary to the alleged "... lack of cooperation from the Patent Office and the lack of support within the Department..." we agreed to explore ways of lowering our costs in the future and we also offered a special AIDS database free of charge, one which we previously had provided to the National Science Foundation for their distribution on Internet.

What is not stated in the message is the decision of the Securities and Exchange Commission (SEC) also to charge IMS for the use of the SEC data, which database cost-recovery arrangement is similar to ours.


Michael K. Kirk

Attachment

ADMIN. FOR INFO. DISSEI
95 JAN - 6 PM 12:19
RECEIVED

Newsgroups: misc.int-property,misc.legal.computing,alt.culture.internet

From: srctran@world.std.com (Gregory Aharonian)

Subject: PATNEWS: PTO shuts down one Internet patent searching site

Date: Wed, 4 Jan 1995 15:15:25 GMT

!19940104 PTO shuts down one free Internet patent search site

For some time Carl Malamud at town.hall.org has been providing searchable access to the full text of all 1994 US patents, and like myself, had been trying to raise support to put the full text of all US patents since 1970 onto the Internet. How was his efforts to help boost US R&D productivity, actually aid the small inventor, and provide a database so that developers of text analysis and retrieval tools would have an ideal test database? How? Read the following message that now appears where the patent search box used to appear at his WWW site:

The U.S. Patent and Trademark Office has formally objected to our distribution of the full text of patent documents on the Internet. They believe that our distribution of patent documents undermines their ability to maintain a viable market for patent documents.

(NOTE: It seems that Commissioner Lehman threw a raft of assistant commissioners and solicitors at Carl to get him to shut down).

We believe that the purpose of the U.S. Constitution is to "promote the arts and sciences," not to maintain the coffers of a few corporate sweethearts. For the last 12 months, the Internet Multicasting Service has provided several thousand patent documents per day to the public at no charge.

The lack of cooperation from the Patent Office and the lack of support within the Department of Commerce for this activity has led us to the decision to drop this database from the Internet for 2 weeks while we try and decide if this is a viable set of documents for us to maintain. After all, we'd hate to upset anybody.

If you feel this issue is important, exercise your democratic voice! Tell Secretary Ronald Brown your opinions on whether the U.S. Government provide full text of all U.S. Patents on-line:

- * Send mail to Secretary Ronald Brown at rbrown@doc.gov
- * Fill out a form for Secretary Ronald Brown
- * Use TPC.INT to fax Secretary Ronald Brown at (1) (202) 482-4576



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

JAN - 4 1995

MEMORANDUM FOR

Denise Michel
Senior Policy Advisor

FROM:

Acting Assistant Secretary of Commerce and
Acting Commissioner of Patents and Trademarks

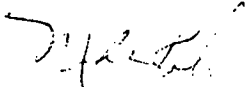
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Michael K. Kirk

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Date: Wed, 4 Jan 1995 15:15:25 GMT

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- * Use TPC.INT to fax Secretary Ronald Brown at (1) (202) 482-4576

Arthur R. Medici
President, North America

**DERWENT**

Scientific and Patent Information

September 12, 1995

Ms. Sally Katzen
Administrator, Office of Information and Regulatory Affairs
OMB

Via facsimile (202)395-3047

Dear Ms. Katzen:

Derwent is one of twenty-eight organizations that buy patent information in electronic form from the PTO. Our scientific and technical specialists write original abstracts and compose new, more descriptive titles as needed for two-thousand plus patents issued each week. We are thus primarily a DataBase producer - print, online and CD-ROM.

Our databases are available through four online services - some of which are accessible via the Internet. We provide competitive products and services. We also compete with all of the other organizations who purchase data from PTO and add value in various ways to produce a product for patent information users. The market has grown substantially the past few years because of this competition and through the increased technological capability to reach more scientists and engineers - providing them with both text and images of patents. However, this industry can continue to be vigorous and grow only if the fair-play policies established by PTO are continued.

This past week, after weeks of press reports and rumors, we received indications that OMB may be supporting efforts for the PTO to offer a free patent text search service via the Internet. This would represent the end of fair play--and of the public-private partnership--as the Clinton Administration has referred to it. This is not only bad policy in a general sense, it is also contrary to OMB's own policies and those of recent legislation passed by the Congress.

We recommend that OMB comply with its own policy and with the provisions of Congressional enactments and drop all support for government provision of free patent searching. If a private organization wants to buy tapes from PTO and provide free searching, that is their right. For the government to do it, turns policies and partnerships upside-down.

Sincerely,

LONDON • WASHINGTON • TOKYO

Derwent North America

Suite 525 1420 Spring Hill Road McLean VA 22102

Telephone 703 790 0400 Fax 703 893 2644

**DERWENT**

Scientific and Patent Information

FACSIMILE

TO : Commissioner Bruce Lehman
COMPANY : USPTO
FAX : 703-305-8664

FROM : Art Medici
FAX : 703-790-5218

DATE : September 12, 1995
PAGES (incl. cover sheet) : 4

25 SEP 12 11:13:55

TIA

LONDON WASHINGTON TOKYO

Derwent Incorporated

Suite 525 1420 Spring Hill Road McLean VA 22102

Telephone 703 790 0400 Fax 703 790 5218

Arthur R. Medici
President, North America



DERWENT

Scientific and Patent Information

September 12, 1995

The Honorable Bruce Lehman
Assistant Secretary of Commerce and Commissioner, Patents and Trademarks
USPTO

Via facsimile (703)305-8664

Dear Commissioner:

The attached letters have been sent to Ms. Katzen and Mr. McConnell of OMB.

Derwent emphatically opposes the type of free service proposed by Carl Malamud. The PTO is encouraged to refrain from the activity.

Sincerely,

LONDON - WASHINGTON - TOKYO

Derwent North America

Suite 525 1420 Spring Hill Road McLean VA 22102

Telephone 703 790 0400 Fax 703 893 2611

FACSIMILE TRANSMISSION

FTD

cc: Assoc Comm

1995 JAN -5 A 10:07

Please deliver this facsimile to:

secretary ronald h brown
us department of commerce

From: berliner@netcom.com
Reply-To: berliner@netcom.com
Date: Thu, 05 Jan 1995 19:55:43 EST
Subject: Patent Documents on the Internet

To: remote-printer.Secretary_Ronald_H_Brown/US_Department_of
_Commerce@6

.7.5.4.2.8.4.2.0.2.1.tpc.int

Message-Id: <199501060055.TAA16609@town.hall.org>

Errors-To: postmaster@town.hall.org

Courtesy-Of: The TPC.INT WWW Server

.....
PUBLIC SERVICE ANNOUNCEMENT

THINK GLOBALLY.



ACT LOCALLY.

Dear Secretary Brown,

For the last several months, Carl Malamud has been operating an invaluable service to the general public by making freely available the complete documentation of new patents. He wishes to continue and expand this service. I hope the Department of Commerce will fully cooperate with such efforts, which redound wholly to the public good. Few bodies of information contain such valuable scientific and technical information as patents. The free provision of this information can provide a tremendous boost to entrepreneurs and technologists in this country. Opposing the free availability of such valuable information in convenient forms, such as electronically thru the global Internet, is ultimately a penny-wise, pound-foolish quest. I'm aware that the PTO supports many of its activities by charging for documents. However, it would be tragic if the mechanism for funding this one government office were to impede the evolution of efficient, pioneering new methods of cheap and free distribution of this information. I urge you to seek ways that PTO may continue its work with adequate funding without hamstringing such efforts as those of Carl Malamud by impeding the free distribution of this information. I hope you will work to see that the PTO fully supports the efforts of Malamud and others to the best of its abilities. Thank you.

Sincerely,

Guy Berliner

Lehman, Bruce

From: Kazenske, Edward
To: Huther, Brad; Lehman, Bruce; Stoll, Robert
Subject: FW: Aharonian on PTO Press Release (re pat abstracts on Internet)
Date: Wednesday, September 27, 1995 5:56PM

Note Aharonian's slam for our efforts.

From: Goldberg, Howard
To: Kunin, Steve; Bounkong, Bo; Kazenske, Edward
Subject: FW: Aharonian on PTO Press Release (re pat abstracts on Internet)
Date: Wednesday, September 27, 1995 4:13PM

FYI

From: Larkins, William
To: Goldberg, Howard
Subject: Aharonian on PTO Press Release (re pat abstracts on Internet)
Date: Wednesday, September 27, 1995 3:44PM

From
news3.digex.net!news2.digex.net!howland.reston.ans.net!news.sprintlink.net!in1.uu.net!news.eunet.fi!news.funet.fi!nntp.hut.fi!freenet.hut.fi!freenet.hut.fi!mews Wed Sep 27 15:26:16 1995
Path:
news3.digex.net!news2.digex.net!howland.reston.ans.net!news.sprintlink.net!in1.uu.net!news.eunet.fi!news.funet.fi!nntp.hut.fi!freenet.hut.fi!freenet.hut.fi!mews
From: srctran@world.std.com (Gregory Aharonian)
Newsgroups: finet.freenet.lists.new-patents
Subject: PATNEWS: YES!!! PTO puts abstracts onto the Internet
Date: 27 Sep 1995 16:26:16 +0200
Organization: Mailing list gatewayed to local news by freenet.hut.fi
Lines: 68
Sender: daemon@freenet.hut.fi
Message-ID: <199509271418.AA26205@world.std.com>
NNTP-Posting-Host: freenet.hut.fi
To: patents@world.std.com

!19950926 PTO putting patent abstract on Internet

I guess the embarrassment of my patent abstract Web page and Carl's two years of full text patents searching has finally gotten to be too much for the PTO, as they have just announced that they are putting up for searching all of the patent abstracts since the 1970's. BRAVO, but.

Unfortunately, IT IS NOT ENOUGH. The PTO hopes people using this new facility to do limited searches will then seek out commercial providers (who might be on the Internet) to do full text searches. THAT IS AN INSULT TO AMERICAN TAXPAYERS. If the PTO can get eight gigabytes of abstracts onto the Internet, it can get the 80 gigabytes of full text patent data. And if it needs server power, I am sure industry will be glad to donate equipment. These lame excuses coming out of the Patent Office about not putting the full patent texts onto the Internet are unacceptable. It is a technologically trivial problem, and there are plenty of resources to do so if the will is there.

The Commissioner should be continued to be pressured as much as possible and by everyone, especially the AIPLA, to put the fulltext of US patents onto the Internet. Whatever misguided loyalty the PTO has to patent information providing parasites does a disservice to American taxpayers. If the SEC can put the full text of all of its 10-K reports onto the Internet, so to can the PTO.

RECEIVED SEP 27 11 06 02
TRADEMARK OFFICE

I am not sure what to do with my patent web site, as many have found the manual of classification linkup to patent titles quite useful. If I can somehow hook it up to the PTO's stuff, I will, but I would prefer if the PTO would accept the web pages I created for the Manual of Classification and incorporate them into their own site.

=====

Patent abstracts will be made available at no charge to the public on the PTO's World Wide Web home page (<http://www.uspto.gov/>) starting Nov. 9. The new service primarily will benefit individual inventors who lack access to a Patent and Trademark Depository Library (PTDL).

Users will be able to do limited initial searches to determine whether a more extensive search is necessary either at a PTDL or through a private source. The PTO expects the new service to spur the creation of commercial online services that will provide full-text searching on the Internet, according to the PTO's Office of Public Affairs. "This new service will give our customers a new way to access important government information," said PTO Commissioner Bruce Lehman.

More than 20 years of searchable patent bibliographic text data -- approximately eight gigabytes of information -- will be available through the home page, which will then direct users to other sources of information. The PTO says the program to disseminate patent information, spearheaded by its Office of Information Dissemination, is an expansion of a program it started a year ago when it made AIDS patent data available on the Internet.

=====

Greg Aharonian
Internet Patent News Service
P.O. Box 404, Belmont, MA, 02178
617-489-3727, patents@world.std.com
(for info on free subscription, send 'help' to patents@world.std.com)
(for prior art search services info, send 'prior' to patents@world.std.com)
(for WWW patent searching, try <http://sunsite.unc.edu/patents/intropat.html>)

KNIGHT-RIDDER INFORMATION, INC.

2440 El Camino Real
Mountain View, California 94040 USA

FAX COVER SHEET

Date: September 12, 1995

To: Bruce Lehman
Commissioner, USPTO

Phone: 703-305-8600
Fax: 703-305-8664

From: Patrick Tierney
Knight-Ridder Info., Inc.

Phone: 415-254-8010
Fax: 415-254-8450

Re: USPTO Patent Services
cc:

Number of pages including cover sheet: 3

MESSAGE:

Please see attached letters.

The communication, including all documents following this transmittal sheet or otherwise referenced herein, is intended only for the use of the individual or entity to which it is addressed and may contain information that is CONFIDENTIAL, PRIVILEGED, and/or otherwise exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this information is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return this original message to us at the above address by mail (or pursuant to any directions given by telephone). Thank you.

RECEIVED
SEP 13 1995

SEP 13 1995

KNIGHT-RIDDER INFORMATION



Knight-Ridder
Information, Inc.
2440 El Camino Real
Mountain View, CA 94040
(415) 254-7000
FAX: (415) 254-7070

September 12, 1995

Mr. Bruce Lehman
Assistant Secretary of Commerce and
Commissioner, Patents and Trademarks
Washington, D.C.

Dear Mr. Lehman:

As an information company providing high quality patent products to the public, we have been very concerned about the recent proposal by Carl Malamud to have the U.S. PTO take over and maintain a free Internet-based patent search service. As a result, we have sent the attached letter to both Ms. Sally Katzen and Mr. Bruce McConnell of OMB. We urge you not to have the PTO involved in such an endeavor, and would be glad to answer any questions you might have about our position.

Sincerely,

Pat Tierney
President and CEO

KNIGHT-RIDDER INFORMATION



Knight-Ridder
Information, Inc.
2440 El Camino Real
Mountain View, CA 94040
(415) 254-7000
FAX: (415) 254-7070

September 12, 1995

Mr. Bruce W. McConnell
Chief, Policy and Technology Branch
OMB
Washington, D.C.

Dear Mr. McConnell:

Until two years ago, only one service -- Lexis/Nexis -- offered online fulltext patent search services. The national policy on patent information encouraged a competitive marketplace, so we at Knight-Ridder/Dialog decided to consider offering an online fulltext patent database.

We made a major investment decision in starting both the online fulltext database and a patent image service for patent image delivery. Although there was some concern about possible U.S. PTO entry in services for private sector patent searchers, we decided to move ahead with our investment based on the government's emphasis on encouraging private investment in the information industry. The current Administration's policies have been entirely consistent with that objective.

During the past few months, we have noticed what seems to be a weakening in the Administration position based, we think, primarily on the promotional campaign of Carl Malamud's "Town Hall" organization. There have been numerous reports in the national press and many rumors about this within the industry. We understand even OMB may now be considering supporting an Internet-based free fulltext search service to be operated by the U.S. PTO. This is of great concern to us, since the proposal as we understand it violates OMB's own policy pronouncements. If there is any truth to what we hear, we would like to urge OMB to reconsider this action and move back to its current policy of supporting free enterprise and allowing high quality private sector information products to continue to meet the information needs of the country.

Sincerely,

Pat Tierney
President and CEO

cc: Assoc Comm
Date: Mon, 4 Sep 1995 22:36:00 -0500 (CDT)
From: Jerry Larson <larsol146@maroon.tc.umn.edu>
To: balehman@pioneer.uspto.gov
Subject: Patent text availability

Sir,

I wish appeal to you to initiate a program that continues the test operation for full text availability of patent texts. Carl Malamud, Internet Multicasting Services, has provided a remarkably useful service for the last year and a half.

As a retired chemist I find this service a simple and most valuable asset. This literature clearly belongs to the people of the United States.

Gerald W. Larson
10550 Quarry Ave. N.
Stillwater, MN 55082
larsol146@maroon.tc.umn.edu

10-11-95 10:00 AM
10-11-95 10:00 AM

95 SEP -5 PM 9:24

RECEIVED

TRADEMARK OFFICE



West Publishing Company
610 Opperman Drive
Eagan, MN 55123
(612)687-4777

VANCE K. OPPERMAN
President

Mr. Lehman
[Signature]
Mr. Huther

September 13, 1995

VIA FACSIMILE
703/305-8664

Bruce Lehman
Assistant Secretary of Commerce and
Commissioner, Patents and Trademarks
U.S. Patent and Trademark Office
Washington, D.C. 20231

Dear Bruce:

I have sent the attached letter to Sally Katzen and Bruce McConnell of OMB. As you can see, we are strongly against the free service proposed by Carl Malamud and urge you to keep PTO out of any such endeavor. Please let me know what I can do to further your efforts on behalf of enlightened public policy in these areas.

Again, congratulations on your absolutely outstanding white paper "Intellectual Property in the NII". I am in awe of someone who can master on the one hand the intellectual information and on the other the political information inherent in this dialogue.

Your friend,

Vance

Vance K. Opperman

VKO:clw

cc: Brad Huther, Associate Commissioner
Patent & Trademark Office

FAX COVER SHEET*Mr. Lehman*
*Mr. Huth***DATE:** SEPTEMBER 13, 1995**TO:** BRUCE LEHMAN
ASSISTANT SECRETARY OF COMMERCE AND
COMMISSIONER, PATENTS AND TRADEMARKS
COMPANY: U.S. PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231**PHONE:****FAX:** 703/305-8664**FROM:** VANCE K. OPPERMAN**PHONE:** 612. 687. 4777**FAX:** 612. 687. 4644**NUMBER OF PAGES INCLUDING THIS ONE:** 4**COMMENTS:**

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VANCE K. OPPERMAN
President

September 13, 1995

VIA FACSIMILE
703/305-8664

Bruce Lehman
Assistant Secretary of Commerce and
Commissioner, Patents and Trademarks
U.S. Patent and Trademark Office
Washington, D.C. 20231

Dear Bruce:

I have sent the attached letter to Sally Katzen and Bruce McConnell of OMB. As you can see, we are strongly against the free service proposed by Carl Malamud and urge you to keep PTO out of any such endeavor. Please let me know what I can do to further your efforts on behalf of enlightened public policy in these areas.

Again, congratulations on your absolutely outstanding white paper "Intellectual Property in the NII". I am in awe of someone who can master on the one hand the intellectual information and on the other the political information inherent in this dialogue.

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Vance K. Opperman

VKO:clw
cc: Brad Huther, Associate Commissioner
Patent & Trademark Office



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610 Opperman Drive
Eagan, MN 55123
(612)687-4777

VANCE K. OPPERMAN
President

September 13, 1995

VIA FACSIMILE
202/395-5167

Bruce McConnell
Chief, Information Policy Branch
Office of Information & Regulatory Affairs
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. McConnell:

In my position as a member of the U.S. Advisory Council on the National Information Infrastructure, I have repeatedly heard government and private sector personnel say that the NII should be built by the private sector. Unless the private sector has failed to act, this admonition has always applied to the NII's content as well. In addition, these principles were recently signed into law as part of the Paperwork Reduction Act.

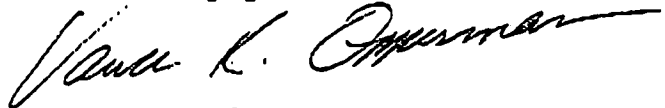
This past week, however, I have been made aware of a campaign to undercut these information policies and destroy the excellent public-private partnership established by this Administration between the Patent and Trademark Office and the many private sector information services that offer patent information to customers all over the world. I am referring to what I understand are attempts to get the Patent and Trademark Office to continue the free patent search service initiated by the Internet Multicasting Service, but to do so as a direct online service provided by the government. I find this to be anathema to the principles mentioned just above. Free market principles and government information policies appear to be tossed to the four winds by support of such a proposal within OMB. The private sector already offers a wealth of full-text (and other) patent and trademark information to hundreds of thousands of users.

I urge you to resist any such proposals and to maintain Patent and Trademark adherence to the Paperwork Reduction Act principles and to the provisions of OMB Circular A-130. The policies established by this Administration and by the Patent and Trademark Office have worked well and should be continued. They help assure continuing U.S. leadership in the information age. I trust you will agree this is vastly more important than a government agency bowing to the whims of an "information wants to be free," but content poor zealot.

In the past, the OMB has been one of the bright spots in terms of cooperation with the NII Advisory Council. For example, the proposed guidelines on privacy were first submitted to the NIIAC for comment in April of 1994, public hearings were held in August of 1994, and additional suggestions were made by NIIAC members prior to our adoption of NIIAC privacy principles at the November, 1994 meeting. You and Sally Katzen have attended, cooperated and reported to the NIIAC on more occasions than any other agency in the federal government. This far-sighted and useful cooperation has, I feel, resulted in extraordinary collaboration between the federal government and private industry and state information concerns. For these reasons, I was doubly upset to hear of the OMB "pressures" upon the PTO. And I must say at this point that the PTO and particularly its far-sighted Commissioner Bruce Lehman has been one of the truly outstanding members of this Administration. Commissioner Lehman's reporting and cooperation with the NIIAC has, along with the OMB, been the other truly outstanding contribution to our activities. Certainly, accommodation between the OMB and the PTO is in the best interest of the information economy of the United States. I urge this cooperation and especially in light of the lack of similar cooperation--at least at the depth previously displayed by the PTO--by other state and federal agencies.

Thank you for your very thoughtful input in the past and I am sure your very thoughtful consideration of these remarks.

Sincerely yours,



Vance K. Opperman

VKO:clw

Coalition for Patent Information Dissemination

Counsel: Joseph L. Ebersole
2101 Connecticut Avenue, N.W., Suite 63
Washington, D.C. 20008-1760
Tel. (202) 265-9447 Fax (202) 265-7126

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September 18, 1995

Page 1 of 4

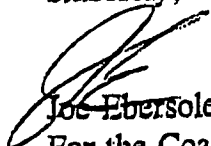
Honorable Bruce A. Lehman
Assistant Secretary of Commerce and
Commissioner of Patents and Trademarks
Washington, D.C. 20231

**RE: Letter to Sally Katzen and Bruce McConnell Regarding "Request" to PTO to
Continue Carl Malamud's Service**

Dear Commissioner Lehman:

A copy of the letter to OMB is attached.

Sincerely,


Joe Ebersole
For the Coalition

Coalition for Patent Information Dissemination

Counsel: Joseph L. Ebersole
2101 Connecticut Avenue, N.W., Suite 63
Washington, D.C. 20008-1760
Tel. (202) 265-9447 Fax (202) 265-7126

*Derwent Inc. * IFI/Plenum Data Corporation * Knight-Ridder Information, Inc.
LEXIS-NEXIS * MicroPatent, Inc. * Questel-Orbit * West Publishing Company*

September 18, 1995

Page 1 of 3

Sally Katzen
Administrator
OIRA
OMB

Fax: 395-3047

Bruce W. McConnell
Chief, Policy and Technology Branch
OIRA, OMB

Fax: 395-5167

Dear Sally and Bruce:

The undue pressure you have received leading to the "request" to PTO to provide free online service has resulted, we believe, in your acting in violation of the letter of OMB Circular A-130 and of the principles of the Paperwork Reduction Act of 1995. Further, this "request" is contrary to the principle of public-private partnerships and encouragement of private investment in the information age espoused by the Administration in its first two years. Accordingly, we believe the request to PTO should be rescinded or withdrawn, and hereby request the same. There are a number of reasons that support this view, including:

1. The request that came from Carl Malamud through friends in OSTP and related staff to you, originated because it costs money -- substantial amounts -- to develop and operate an online service on the Internet or any other network. Thus, in one respect, this is merely a request for funding that has followed an oblique route not authorized, to our knowledge, by any statute or regulation.
2. An unofficial study by PTO technologists earlier this year estimated it would cost around \$8 million the first year to start an online patent full-text search service, and around \$4.6 million per year thereafter to operate. (For text only, patent image service costs would be much higher.) This was a good-faith, rough estimate that primarily indicates the probable cost levels for a service of the type requested. However, private sector experts who reviewed the estimate were of the opinion it significantly underestimated total costs. (This level of costs is in contrast to, for example, the estimated cost level of not more than \$250,000 per year for EDGAR online service.) In a year when both the Congress and the President are trying to lower costs, and in a year when PTO has already had millions of dollars of its ratepayer funds diverted to other uses, it seems unconscionable to issue what amounts to an unfunded mandate to PTO.

3. The pressure on PTO from OMB to continue the Malamud system amounts to a violation of your own OMB Circular A-130 and of the principles of the Paperwork Reduction Act of 1995.

a. OMB Circular A-130, Section 8a(5)(d)(i) requires agencies to minimize the cost (of information dissemination) to the government and the public, while Section 8a(5)(d)(ii) requires dissemination on "equitable and timely terms." What does "equitable" mean? Your OMB Analysis that accompanied the June 25, 1993, Revision, states that the word "equal" was "removed from this Section since there may be instances where, for example, an agency determines that its mission includes disseminating information to certain specific groups or members of the public, and the agency determines that user charges will constitute a significant barrier to carrying out this responsibility." In the Malamud-PTO case there has been no claim that a specific group is not being served, nor has there been any showing that Malamud's Town Hall System -- or a system developed by PTO -- has design features that allow its use to be restricted to a specific group.

b. The assertion of violation of Section 8a(5)(d)(ii) is also supported by the legislative history of the Paperwork Reduction Act of 1995. Section 3506(d)(1) of that Act requires "timely and equitable access." The Conference Report (at 19) states that:

"The conferees concluded that the word "equal" was unnecessary in the agreed-upon text of section 3506(d)(1), given that the statutory obligation for an agency (to) ensure that the public has "timely" and "equitable" access to information available in the possession of the agency includes the obligation to make such information available on a non-discriminatory and non-exclusive basis to any public or private entity for any lawful purpose. This obligation is sufficient to prevent agencies from discriminating against or otherwise disadvantaging any class of users, particularly commercial users." (emphasis added)

An order by OMB to PTO, or independent action by PTO itself, which results in giving patent information free to one class of users while charging fees as high as \$33,960 (for text and images) per year to commercial organizations that provide value-added services to the patent user community certainly violates, on its face, the "equitable access" provision of your own Circular A-130 and of the principles of the 1995 Act.

c. The OMB "request" to PTO also violates Section 8a(6)(b) of A-130, which requires agencies to: "Consider whether an information dissemination product available from other Federal or nonfederal sources is equivalent to an agency information product and reasonably fulfills the dissemination responsibilities of the agency;..." Your analysis of this subsection states that agencies "should not expend public resources filling needs which have already been met by others

in the public or private sector." In the case of patent information, these needs are already being met by PTO and the Patent and Trademark Depository Libraries, and by the private sector patent information dissemination industry.

d. The Paperwork Reduction Act of 1995 is also applicable to the *sub rosa* process that has been pursued in this case. Even though it will not become effective until October 1, 1995, the Act sets forth requirements with which we know you are familiar. For example, Section 3506(d)(3) requires an agency to "provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products." This implies, *inter alia*, an open process. Surely, the Malamud-to-OSTP *et.al.*-to-OMB-to-PTO process does not meet this standard.

4. Long before the Internet -- in fact, in 1977 -- the private sector began creating machine-readable patent information. PTO started providing patent text in electronic form in 1982; and image data in the late 1980s. As a result, a whole new industry segment has developed specializing in patent information. Over 28 organizations purchase weekly patent tapes. Thus, the massive PTO computer files have now been replicated many times and many "virtual PTOs" -- for dissemination purposes -- now exist. Hundreds of products and services are provided and a number of new businesses have been created in the past three years alone. This is now a well-established industry that has been an effective means of disseminating patent information. Every company is in the midst of changing its delivery systems and a number are now testing new business models including free full-text and image searching on WWW sites. Your action in the instant case will have the effect of crippling these new business models before they have a chance to develop commercial viability. As to existing services, the large ones will probably not go out of business because of your actions, but some of the start-ups certainly will. However, even the larger ones will suffer use reduction, the result of which will be higher prices for patent information users, and reduced investment by these companies at the very time when the information age -- especially the WWW and multimedia applications such as patent text and images -- calls for more investment in order to grow and keep the U.S. in the lead.

As you well know, the appearance of justice is as important as doing justice. In this case the appearance certainly suffers. We believe also that a reasonable interpretation of your own policy guidance indicates you are promoting substantive violations thereof. Accordingly, we respectfully request that the "request" to PTO be rescinded.

Yours very truly,



Joseph L. Ebersole
For the Coalition

9443 Springboro Pike
Post Office Box 933
Dayton, OH 45401
(513) 865-7300 (513) 865-1987 FAX



LEXIS-NEXIS

Paul Brown
Vice President
Legal Information Services

September 12, 1995

Bruce Lehman
Assistant Secretary of Commerce and Commissioner, Patents & Trademarks
FAX: 703-305-8664

Dear Mr. Lehman:

We have sent the attached letter to Ms. Sally Katzen and Mr. Bruce McConnell of the Office of Management and Budget. As you can see, we continue to oppose the free patent service proposed by Mr. Carl Malamud. We hope that you understand our position and that we sincerely hope to continue the effective public-private sector partnership LEXIS-NEXIS and the Patent and Trademark Office have enjoyed for many years.

Yours sincerely,

Paul Brown

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TRADE MARK OFFICE



LEXIS-NEXIS

Paul Brown
Vice President
Legal Information Services

September 12, 1995

Ms. Sally Katzen
Administrator, Office of Information and Regulatory Affairs
Office of Management and Budget
FAX: 202-395-3047

Dear Ms. Katzen:

In 1981, we were the first company to agree to purchase the full text patent tapes developed by the Patent and Trademark Office. We used those tapes to produce the world's first, commercial, online service for search and retrieval of U.S. patents. The cost of the text backfile has been approximately \$100,000, with yearly updates costing \$5,295, and we have invested significantly more in enhancing that information for our customers. Some examples include:

- Development of fabrication processes which allow us to have the full text of issued patents online within 5 hours of receipt of the tapes from the PTO.
- Development of a computerized process to integrate all changes made by the PTO to the patent classification and assignment records within 1 business day of receipt of those tapes from the PTO.
- Establishment of an editorial process which adds all patent notices from the Official Gazette into the text of the affected patents (Withdrawn Notices, Fee Reinstatements, Interference Decisions, Term Extensions, Reexamination Requests, and Corrections) within 2 days of receipt of the OG.
- Establishment of an editorial process to integrate Notices of Litigation provided by the PTO into the text of affected patents within 2 days of receipt from the PTO.

We have also purchased the image backfile (from 1975 to current) in collaboration with one of our sister companies, Reed Technology Information Services. The cost of that backfile approached the cost of purchasing the text files and the yearly cost of updates is \$19,630. We used the image tapes to develop the first commercial database of online patent drawings and are pleased to announce its availability on September 15, 1995. The cost to develop the technology to deliver this online, image based service was extremely high.

LEXIS-NEXIS has invested several million dollars over the past 15 years to develop this online product of the full text of U.S. patents, along with all changes to those patents issued by the PTO and all drawing sheets linked to their respective patents. That investment includes development of search tools and technologies to aid in patent research like statistical analysis of search terms. We have also invested significantly in programs to support this unique product with our customers, including:

- A 24 hour Customer Service organization which receives extensive training in patent information products to support customer inquiries.

Page Two

- An international sales organization which also receives extensive training in patent research and information products to support customer training.
- Extensive literature and training materials to facilitate our customer's need for patent research tools which provide accurate and complete answers.
- Global marketing efforts to create awareness of the services we provide.

We welcome any competitor who wishes to purchase patent tapes to enter this information business. They face relatively low market entry costs and opportunities to benefit from the same private-public sector partnership we appreciate with the PTO. In fact, we have seen many new entrants into this business, especially over the past 5 years, and all patent researchers have benefited from the healthy and honest results of this competition.

We are aware of numerous press articles about Carl Malamud and his attempts to assure free access to the patent data. We are also aware that the OMB has decided to support the Malamud proposals to overturn many years of OMB information policy and defy the principles of the Paperwork Reduction Act by promoting this free online patent searching through the Internet.

We strongly urge you to drop support for these proposals. We have no objection to any organization offering a service at any price, including free, as long as they have paid for the information on an equal footing as LEXIS-NEXIS and numerous other private sector companies. However, to support and promote free use of a service directly from the government is a violation of the good relationship between the private and public sector, marketplace principles, and the very policies that OMB is obligated to support under the Paperwork Reduction Act.

We urge you to withdraw any support of Mr. Malamud's proposals for patent information.

Yours sincerely,



Paul Brown

INTERNET



TOWN
HALL

We also believe a third alternative is available, distribution of the data on the information superhighway. Vice President Al Gore, Secretary Ron Brown, Speaker Newt Gingrich, and many other senior public officials have all indicated that increased use of the information highway to distribute government data is the policy of the United States Government.

For the past year, the Internet Multicasting Service, a 501(c)(3) non-profit, has been distributing 1994 Patents on the Internet. We have been sending out over 3,000 documents per day to American citizens. This distribution method is clearly feasible, is cost effective, and is public policy. Use of the Internet should be actively investigated by the PTO instead of their current policy of ignoring the Internet for fear that it will hurt the financial prospects of a few government contractors.

Sincerely,

Carl Malamud

* ES/OS *
*

CONTROLLED CORRESPONDENCE

CONTROL #: C540726

DATE DUE IN EXEC SEC: / /

WHITE HOUSE CONTROL #:

PRIORITY: NONE

ACTION AGENCY: PTO

COORDINATE WITH:

ADDRESSED TO: SECY

SIGNATURE LEVEL:

INSTRUCTION: FOR INFORMATION

FROM: MALAMUD, CARL
(IMS)

TITLE:

SALUTATION:

NUMBER OF COSIGNERS: 0

SUBJECT: REQUEST THE PUBLIC IS ABLE TO MAINTAIN ACCESS TO
KEY DATABASES

INFO COPIES: ES,

RECEIVED: 08/08/95

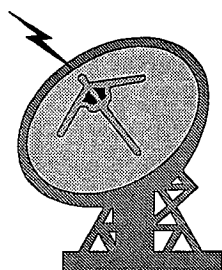
ASSIGNED: 08/08/95

THE CORRESPONDENCE ANALYST FOR THIS DOCUMENT IS BD
BD

ASSISTANT SECRETARY
AND COMMISSIONER
95 AUG -9 PM 12:16
U.S. PATENT
AND
TRADEMARK OFFICE

Logo
Mr. Lehman
cc: OLA
Mr. [unclear] [unclear] Comm

August 4, 1995



IMS

Carl Malamud
President

Hon. Thomas Daschle
U.S. Senate
Washington, D.C. 20515

Dear Senator Daschle:

You will find enclosed letters that were sent today to Chairman Levitt of the Securities and Exchange Commission and Commissioner Lehman of the Patent and Trademark Office. For the past 19 months, the non-profit Internet Multicasting Service has posted SEC and Patent electronic documents on the Internet, providing over 4.7 million documents free of charge to the American public. Over 20,000 documents per day are distributed through this "information safety valve," the only readily available public source for these key government databases.

On October 1, we will terminate this service. As a public service, our small non-profit, with corporate contributions, a National Science Foundation grant, and a joint venture with New York University, undertook this demonstration project. We wanted to show that there is a cost-effective, secure, technically effective way to get large government databases distributed to the American public. The project has clearly succeeded.

Our users range from college students looking for jobs to corporate engineers to senior citizen investment clubs to workers trying to track their mutual funds. The two-year demonstration project ends October 1, and we are concerned that neither the SEC nor the Patent office have taken any steps to ensure that a public source of data remains available.

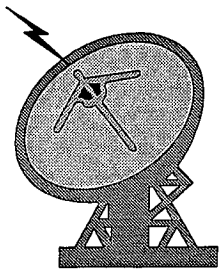
Under the leadership of both Congressional Republicans and the Clinton Administration, the Congress and the President recently passed the Paperwork Reduction Act. This law makes it an obligation of agencies to ensure that their information be made available in an equitable manner to all citizens with a diversity of public and private sources.

On October 1, there will be no diversity and no equitable access. Let me give you a concrete example. Microsoft's annual report for 1994 is available on our system at no charge to the user. The largest commercial source for this data, Lexis-Nexis, sells the same document for \$622. We certainly defend their right to sell documents at any price: that's the American way. But, it is only common sense that there must be alternate sources available for such important public information.

The SEC and Patent documents are basic enabling documents for our information economy. The purpose of the public disclosure requirements in the SEC Acts of 1933 and

THE INTERNET MULTICASTING SERVICE

SUITE 1155 • THE NATIONAL PRESS BUILDING • WASHINGTON, D.C. 20045
TEL: (202) 628-2044 • FAX: (202) 628-2042 • EMAIL: Carl@Radio.COM



IMS

1934 is to guide investment dollars to the right portions of our marketplace. The very purpose of our Patent system is to encourage the rapid growth of technology and science by documenting the state of our knowledge. These databases are not products or profit centers, they are the very fuel of our information economy.

This issue is clearly nonpartisan. The Clinton Administration has repeatedly praised our efforts, calling the Patent project "a big win for the American public" and the SEC project "an Administration priority." The *Contract with America* made equitable and timely distribution of government information a priority. President Clinton, on the bill's signing, remarked on the fact that there was not a single dissenting voice in Congress for this important piece of legislation!

This issue is a key test of our resolve to build a National Information Infrastructure. Will the remarkable advances in of our public policy towards new technology in the past 2 years turn into something real, or will the efforts of a few government bureaucrats block change? Will the new law be turned into an empty symbol of what might have been? Will public information become truly public or will we continue to auction America's databases to the highest bidder?

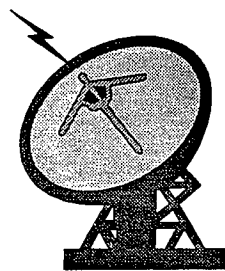
I hope you will take steps to ensure that the public is able to maintain access to these key databases in an equitable and timely manner.

Sincerely,

A handwritten signature in dark ink, appearing to read "Carl Malamud".

Carl Malamud

August 4, 1995



IMS

Commissioner Bruce A. Lehman
U.S. Patent and Trademark Office
14th and Constitution, N.W.
Washington, D.C. 20321

Dear Commissioner Lehman:

Carl Malamud
President

Since January, 1994, the non-profit Internet Multicasting Service has maintained an on-line database of U.S. Patent documents, as well as the full text of SEC Edgar documents, for the American public to access at no charge. This service will terminate on October 1, 1995.

Our on-line service allows keyword searches of the full text of U.S. Patents using the WAIS, World Wide Web, Gopher, and Electronic Mail services. Bulk transfers are available via the File Transfer Protocol. A digital signature is added to each document to allow users to verify the contents. Background material and links to additional resources are also maintained on the system.

Since January, 1994, we've sent out over 1.5 million Patent documents to the public. Over 2900 documents per day are now being distributed, and there is a strong demand by users for the full database (the more fully developed SEC system, for example, sends out over 17,000 documents per day). Our current database of patent documents is 180,000 files and 7.1 Gbytes. Given the current average rate of data, we estimate that a year of your data is approximately 4.5 Gbytes.

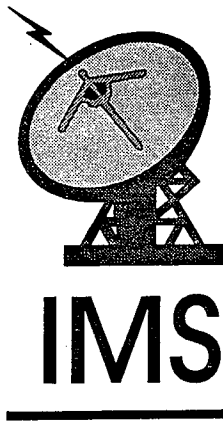
Based on the access figures and the size of your database, it would be a trivial task to put the entire Patent database available on the Internet. The cost of computer equipment, routers, and disk drives is well under \$150,000. Our staff maintains the Patent dissemination service for well under 0.5 FTE of a systems programmer and 0.5 FTE of a developer, for a total labor cost of under \$100,000. Internet access is under \$25,000/year. If you depreciate the equipment over 3 years, the total cost per year of providing Internet access to your entire database is \$175,000.

Our Patent and EDGAR service has been funded partially by a grant from the National Science Foundation. Additional support was provided by our corporate sponsors, by a coalition of university research centers, and with a great deal of "sweat equity" and our own money added by our dedicated staff committed to this important public service.

Recently, the Congress passed and the President signed the Paperwork Reduction Act, which becomes law October 1. This bill was a key provision of the *Contract with*

THE INTERNET MULTICASTING SERVICE

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America and has received the strong support of the Clinton administration. The law reads:

"(d) With respect to information dissemination, each agency shall--

"(1) ensure that the public has timely and equitable access to the agency's public information, including ensuring such access through--

"(A) encouraging a diversity of public and private sources for information based on government public information;

"(B) in cases in which the agency provides public information maintained in electronic format, providing timely and equitable access to the underlying data (in whole or in part); and

"(C) agency dissemination of public information in an efficient, effective, and economical manner;

In case there is any doubt, the committee reports go on to stress that information dissemination is an "integral part of the information life cycle," and emphasize that the purpose of the law is to "enunciate clearly the obligation of Federal agencies to ensure effective public access to government information."

Many of us have learned from the last two years of this demonstration project. It has been remarkable to see how large a portion of the American public has interest in these key documents. It has also been remarkable to see the advances in technology that allow dissemination to all members of the public a realistic and cost-effective goal. We hope you will embrace both the spirit and the letter of the laws recently passed by the Congress and signed by the President and that you will ensure that Patent data remains available on-line and does not get auctioned off to the highest bidder. We look forward to seeing your Internet service and will continue to be available to your staff as you make this important transition to the information age.

Sincerely,

A handwritten signature in dark ink, appearing to read "Carl Malamud", is written over a horizontal line.

Carl Malamud

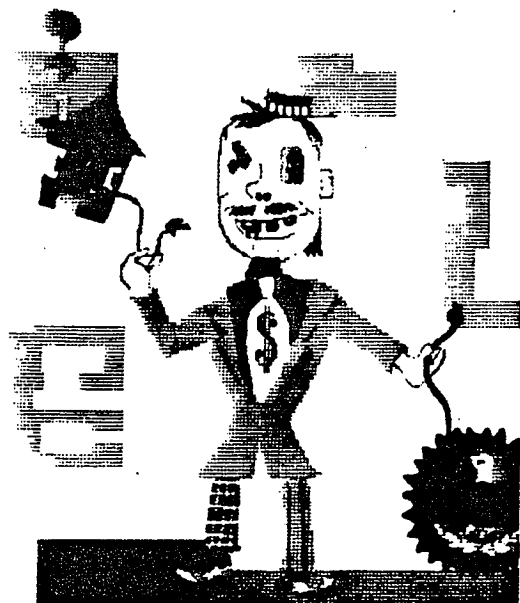
cc: Vice President Gore
Hon. Ron Brown, Secretary of Commerce
Ms. Sally Katzen, Office of Management and Budget

Hon. Newt Gingrich, Speaker of the House
Hon. Robert Dole, Majority Leader of the Senate
Hon. Connie Mack, Republican Conference Secretary
Hon. Thomas Daschle, Minority Leader of the Senate
Hon. Richard Gephardt, Minority Leader of the House

JAMES

GLEICK

Washington Unplugged



IF YOU HAVE TIME ON your hands and cash to spare, you can walk into the Patent and Trademark Office in Arlington, Va., sit down at a computer terminal and browse through the entire technological history of the United States, invention by invention: the drawings and descriptions of Morse, Whitney and Bell; the paper clip, the transistor and the accelerating rush of scientific creativity in modern times.

"We have basically all the images and text going back to 1790," says the commissioner, Bruce Lehman. "That's unique in the world. This is a fabulous data base." It is a treasure trove for scientists, historians, students — anyone who needs to see the art and thinking of the inventors who came before.

Now the bad news. It will cost you \$40 an hour, a pro-

hibitive price for any but the most specialized user. Alternatively, you can dial into a private data service like Lexis or Dialog and pay even more — fees that can amount to hundreds of dollars an hour for public information.

This is the Information Age, Washington style. As a citizen of the United States, you have accumulated valuable property, in the not-so-ethereal form of data. And most of it is locked away where you cannot get at it.

Every time an inventor receives a patent, the secrets of the invention become available to the public for their perusal. The same is true of every planetary image beamed from a space vehicle, every corporate filing before the Securities and Exchange Commission, every decision of every judge, every Geological Survey map, every Fed-

eral health study, and ultimately every memo of the President's, scrawled or E-mailed. They all join a virtual public library — arguably the most valuable storehouse of data on the planet. It is also one of the most archaic: scattered across departments, poorly catalogued and expensive to access. And, with few exceptions, it is off line.

Meanwhile, across the Potomac from the patent office, in a tiny room in the District of Columbia, sits the Internet Multicasting Service, which is not much more than a fast telephone line attached to a donated work station and disk drives. The service has obtained the patent data for last year and the first months of this year and put it on line, free, fully indexed and searchable. Carl Malamud, the service's founder, says he could just as easily offer the entire historical data base — but the office won't give him the data.

"They treat this as a product, but it's not a product — it's enabling information," he says. It is, or should be, fuel for the information economy.

The patent office already has a high-bandwidth Internet connection. That could easily enable any of the millions of home and business computers with access to the Internet to plug into its system and see what a user sees at that Arlington terminal, just as any computer can now plug into the New York Public Library's on-line catalogue or the data bases of thousands of other libraries. The public has already paid more than \$400 million to create a patent data base available only to walk-in traffic.

So why not go on line? The commissioner's responses echo the reasoning of scores of other government agencies, Federal and local, facing the same issue:

• *It's not our job.* "We're

not a library," Lehman, the commissioner, says. "It's not the fundamental purpose of the patent office. Now if Congress wants to change that they can, and they can provide us with a tax appropriation to do that."

• *We're doing it anyway, as fast as we can.* "It has always been part of our plan to provide a plug into the patent office to outsiders," Lehman says. "We are not at this moment in time in a position to open up that plug for technological reasons."

• *And, we must not compete with the private sector.* "We're developing a big information industry in the United States. We already see about 30 companies that feed off the patent office, and we want to encourage that. Part of what we're trying to do is bootstrap new industries."

That last argument sounds attractive, until you realize that those companies are lobbying for the privilege of paying the Government more — in other words, they want to forestall competition. They belong to an industry that has used heavy, targeted campaign contributions to protect its stake in an economic model that is rapidly becoming obsolete: scarce data sold to specialists at high prices. West Publishing, with a near monopoly on the Government's court data bases, is a costly example, as lawyers quickly discover. The Internet has created a different model: information of all kinds, a mass audience, low prices.

Lehman acknowledges that private-information services lobby him hard to keep prices up; he denies being influenced by their pleas. Nevertheless, the patent office, like many other Federal agencies, sells its data mostly on old-style mainframe computer tapes, at prices low enough to guarantee enormous profits for commercial services but just high enough to prevent widespread distribution.

A potentially far-reaching new statute, passed with little fanfare this spring, requires Government agencies to make electronic data available for no more than the "cost of dissemination." Twenty-five years of patent data — for which the patent office charges nearly \$200,000 — would fit on tape cartridges costing no more than a few hundred dollars. How to explain that gap? The office's arithmetic counts not just the tapes and the few technician-hours that would be needed to fill them with data, but also fuzzier items: general staff time, updating the data bases and "customer service."

This is an Administration that has jawboned hard for the on-line world since taking office. The White House has an elegant home page on the Internet, with digital renditions of official seals, speeches and their press releases — political information sitting in for the real thing. Yet where the truly valuable data bases are concerned, the Clinton Administration has produced no comprehensive plan for the future.

It may not be necessary. The White House could take a powerful step forward merely by leaning on its bureaucrats: ordering them not just to comply with the new public-information law but to embrace it. That would mean taking the crucial phrase *cost of dissemination* literally — cheap disks or tapes; duplicating and shipping and nothing else.

"People are concerned about universal access — the wire running into your house will be the easy part," says James Love, director of the Taxpayer Assets Project, a Washington advocacy group. "Certainly the one thing people shouldn't have to worry about is government information, the thing they own as taxpayers. There'll be lots of other things they won't be able to afford. At least this should be available." ■

Business Day

The New York Times

D1

FRIDAY, OCTOBER 22, 1993

U.S. Shifts to Freer Policy on Data Access

Continued From First Business Page

information as a commodity, often available for sale to private industry. The new policy encourages Federal agencies to make as much information as possible available to the public with fees as low as possible.

The project underscores how rapidly changing computer and network technologies are making it possible to offer low-cost access to Government information that has previously been available only on paper in libraries or electronically on mainframe computers that were difficult and expensive to tap into from remote locations. But increasingly, that mainframe data can be transferred easily to inexpensive work stations.

It also emphasizes the rapidly increasing scope of Internet as the forerunner of a national data highway that is expected to carry computer data, video and voice conversations beginning in the next century.

The project, financed with a \$660,000 two-year grant from the science foundation, is being undertaken by the Stern School of Business at New York University and a small Washington company, the Internet Multicasting Service. They plan to make the Friday announcement.

Currently the S.E.C. data base, called the Edgar Dissemination Service, is operated under contract by Mead Data Central. Mead acts as a data wholesaler, providing a variety of computer data feeds to the retail information industry.

Under this system, a retail information provider, like Mead Data's own Nexis service, charges about \$15 for each S.E.C. document, plus a connection charge of \$39 an hour and a printing charge of about \$1 a page.

The only fees to use the S.E.C.'s data base under the science foundation's project would be for access to the Internet, for which pricing varies. Commercial access can be bought for as little as \$2 an hour. But many college students now obtain Internet access as part of their tuition costs and many businesses buy a high-speed Internet connection that might cost the company hundreds or thousands of dollars each month but permits employees to share unlimited access to the network.

A legislative-affairs lawyer for the Information Industries Association, Ronald Plesser, said the industry would not oppose the project as long as the Government did not intend to restrict commercial publishing of Federal data.

"We have no problem with data bases being made available over the Internet," Mr. Plesser said. "But there has to be an interest in insuring a diversity of sources. We don't want a Government monopoly on the ownership and dissemination of Government information."

Representative Edward J. Markey, a Massachusetts Democrat who is chairman of the House Telecommunications Subcommittee has been pushing for greater public access to the S.E.C.'s Edgar Dissemination Service. He said today that he applauded

the science foundation's move.

"I've been trying to launch Edgar into cyberspace for the last year, and I think the S.E.C. finally gets it," Mr. Markey said, adding that he expected the project to stimulate the commercial market rather than hurt it.

"The Internet will prove to be a friend of the private information providers," he said. "It gives people a taste of what on-line information is."

The company involved in the project, the Internet Multicasting Service, is a nonprofit organization founded by Carl Malamud, an economist who developed computer technology for the Federal Reserve Bank. Mr. Malamud has also been instrumental in creating technology that is capable of broadcasting information including audio, video and data over the Internet.

"We're not interested in replacing Mead Data," Mr. Malamud said. "I'm not in the financial data base business. This is designed to demonstrate the effectiveness of this technology."

He said that the data would be delayed by a day, in contrast to the instant access that is provided by some on-line publishers for financial professionals. Under the terms of the science foundation grant, the New York University researchers will buy raw data and then reformat it so that it can be obtained easily over the Internet through Mr. Malamud's organization. Mr. Malamud said he hoped to have the new data base service operating by the end of the year.

U.S. Shifts To a Freer Data Policy

Computer Network To Carry S.E.C. File

By JOHN MARKOFF

Special to The New York Times

SAN FRANCISCO, Oct. 21 — In the clearest indication yet of the Clinton Administration's willingness to offer broader public access to Government information, the National Science Foundation is financing a project that will make corporate filings to the Securities and Exchange Commission available free via a computer network.

The decision to support the project, which will provide access to the S.E.C.'s on-line data base of financial data from America's public corporations, is a shift away from the Federal information policies under Presidents Ronald Reagan and George Bush. Those Administrations favored letting private companies sell printed and electronic versions of Government data.

Although the National Science Foundation project, which will be announced on Friday, is a test, it has broad implications for creating fast, inexpensive consumer access to public records of all sorts. The precedent could threaten the huge industry that has grown up to sell financial records, court cases and other public documents over services like Mead Data Central's Nexis and Lexis networks.

An Administration 'Priority'

"This is a priority for this Administration," said Michael Nelson, special assistant to the director of the White House Office of Science and Technology policy. "This is another indication of the Administration's commitment to make Federal information more available to the taxpayers who paid for it."

The project will make disclosure of information from corporations accessible to anyone who has access to the Internet computer network through a modem or a direct network link. The Internet, a loose collection of computer networks that is administered by the National Science Foundation, is now routinely accessible from most university campuses and businesses.

Internet access is rapidly becoming a feature of many commercial on-line computer services as well. Some 20 million computer users are connected to the Internet.

"This is a wonderful example of how the Internet might be used to provide access to Government information," said Marc Rotenberg, national director of the Computer Professionals for Social Responsibility, a Washington public interest group.

In June, the Office of Management and Budget announced that it was reversing previous Administration policy that had defined Government

Continued on Page D7

Battle Brews Over Fees for SEC Reports

Group Believes Public Should Have Free Access

By Robert Thomason
Washington Post Staff Writer

Need electronic data about the quarterly revenue of a publicly traded company? Traditionally you've had to buy the information. Now, the government database that contains it is being tapped by on-line activists who, for the time being at least, are managing to distribute it for free.

It's all perfectly legal. With government and private funding, the Washington-based Internet Multicasting Service is buying raw financial data that companies file to the Securities and Exchange Commission's "Edgar" database, then putting it on the Internet computer network, where it can be retrieved by people worldwide.

The service has fueled a debate in many government agencies as cost-conscious Republicans come to power and electronic technology advances: Should agencies put on-line for free myriad information that they generate daily, or should they charge for it and save taxpayers some serious money?

Pioneers of the information highway say
See SEC, page 20

BESTSELLERS

Most popular titles in the entertainment category sold by 11 Software Etc. stores in the area in the week ended Dec. 31.

TITLE	PUBLISHER
1. Myst	Broderbund
2. Wing Commander III	Origin
3. Star Trek: The Next Generation Technical Manual	Simon & Schuster
4. Doom II	ID/GT Interactive
5. King's Quest VII	Sierra Online
6. Cyberia	Interplay
7. U.S. Navy Fighters	Electronic Arts
8. Creature Shock	Virgin
9. Omar Sharif on Bridge	Interplay
10. The 7th Guest	Virgin

WASHINGTON BUSINESS/JANUARY 9, 1995

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Washtech

SEC Report Charges Create Internet Debate

SEC, from page 17

the public deserves free, or at least very inexpensive, access to the SEC's huge Edgar system, which stands for Electronic Data Gathering, Analysis and Retrieval. It contains reports that publicly traded companies are required to file with the SEC.

But the SEC is resisting, choosing instead to sell the data to computer services companies that repackaging it and sell it on to the public. The SEC is required to fund itself, officials point out, and revenue from these sales is a big help.

The Internet Multicasting Service, a small nonprofit organization developing new uses of the Internet, began its SEC work in January 1993 with a grant from the National Science Foundation. That grant expires this year, so the service is lining up private help. So far, money or in-kind help has been pledged by Massachusetts Institute of Technology and New York University, Sun Microsystems Inc., MCI Communications Corp., RR Donnelley & Sons Co. and Time Inc.

Carl Malamud, president of Internet Multicasting, has called the coalition the Information Highway Beautification Fund.

Although he is celebrating the successful fund-raising effort, he still believes that the government should cover the cost of disseminating information that citizens have helped to generate by paying their taxes.

Internet Multicasting and its ally in this effort, Taxpayer Assets Project, are heartened by recent Republican moves to expand on-line access to government information. But they have not received commitments from GOP lawmakers about free public access to Edgar.

"The role of the SEC is to provide information to the market," Malamud said.

As the federal government expands its presence in electronic media, putting the data on the Internet for free would be an excellent way to pursue the SEC's goal, he said. He estimated that an Internet operation would require about \$100,000 to start up and would need two employees to maintain.

But the SEC, which experienced years of delays and more than \$20 million in cost overruns to launch the Edgar project in the first place, is loathe to embark on new ventures when experienced and well-known companies pay well for the opportunity to do it.

David Copenhafer, who directs Edgar for the SEC, says the agency has neither the technical expertise nor the legal mandate to supply financial information in the sophisticated ways demanded by many computer users. The SEC collects raw data, but the data-service companies don't typically resell it that way;

they "add value" by breaking it down into meaningful units.

"There will be hundreds of different products making use of the Edgar data to meet a tremendous spectrum of needs," Copenhafer said.

The database industry can meet these needs through their many technologies, he said, while the SEC cannot pretend to meet these needs with a single Internet database.

The information already is becoming available through a variety of computer media.

Several companies are loading SEC data on CD-ROM discs. Moody's Investor Service Inc. is offering CD-ROMs of Edgar data at \$995. Another company, Edgar Express Corp. of Florida, provides filings on a CD-ROM, but charges \$4 for the password necessary to access the data in a single file in it.

In addition, the SEC is working with the Government Printing Office, which will produce a CD-ROM of Edgar data. And a local firm, DBT Design of Fairfax, is training companies to file to the new system.

Dayton, Ohio-based Lexis-Nexis is the prime SEC contractor that disseminates on-line data. The firm sells instantaneous feeds of SEC filings at a regulated annual prices of \$183,000 or \$138,000, depending on the speed of transmission used. It also provides, each day, computer tapes of the previous day's filings for \$78,000 per year. The information is also available on Lexis-Nexis.

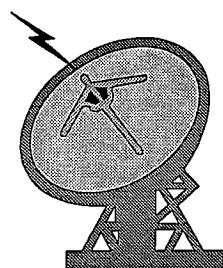
Sharon O'Donoghue, director of corporate legal markets for Lexis-Nexis, predicted that inexpensive Internet access to raw SEC data would not cut into Lexis-Nexis's business.

Most business customers do not want entire SEC documents, which are now available on the Internet and can be more than 100 pages long, O'Donoghue said.

Instead, she said, they want highly specific information about companies that would enhance their particular investment strategies. And some need it in a matter of seconds, or else the information is useless, she added.

In development since 1983, Edgar is scheduled to include filings from all of the 15,000 public companies this summer. The SEC operates the system in offices in Springfield, where it receives the data from the filing companies, compiles it and ships it electronically.

To access Internet Multicasting's Edgar data, Internet subscribers can use the gopher function to reach <gopher.town.hall.org>, the ftp function to reach <ftp.town.hall.org>, or the World Wide Web to reach www.town.hall.org. Information can also be obtained through electronic mail by sending a message to mail@town.hall.org, with the word help as the text of the message.



IMS

Carl Malamud
President

Commissioner Bruce A. Lehman
U.S. Patent and Trademark Office
14th and Constitution, N.W.
Washington, D.C. 20321

Dear Commissioner Lehman:

Since January, 1994, the non-profit Internet Multicasting Service has maintained an on-line database of U.S. Patent documents, as well as the full text of SEC Edgar documents, for the American public to access at no charge. This service will terminate on October 1, 1995.

Our on-line service allows keyword searches of the full text of U.S. Patents using the WAIS, World Wide Web, Gopher, and Electronic Mail services. Bulk transfers are available via the File Transfer Protocol. A digital signature is added to each document to allow users to verify the contents. Background material and links to additional resources are also maintained on the system.

Since January, 1994, we've sent out over 1.5 million Patent documents to the public. Over 2900 documents per day are now being distributed, and there is a strong demand by users for the full database (the more fully developed SEC system, for example, sends out over 17,000 documents per day). Our current database of patent documents is 180,000 files and 7.1 Gbytes. Given the current average rate of data, we estimate that a year of your data is approximately 4.5 Gbytes.

Based on the access figures and the size of your database, it would be a trivial task to put the entire Patent database available on the Internet. The cost of computer equipment, routers, and disk drives is well under \$150,000. Our staff maintains the Patent dissemination service for well under 0.5 FTE of a systems programmer and 0.5 FTE of a developer, for a total labor cost of under \$100,000. Internet access is under \$25,000/year. If you depreciate the equipment over 3 years, the total cost per year of providing Internet access to your entire database is \$175,000.

Our Patent and EDGAR service has been funded partially by a grant from the National Science Foundation. Additional support was provided by our corporate sponsors, by a coalition of university research centers, and with a great deal of "sweat equity" and our own money added by our dedicated staff committed to this important public service.

Recently, the Congress passed and the President signed the Paperwork Reduction Act, which becomes law October 1. This bill was a key provision of the *Contract with*

THE INTERNET MULTICASTING SERVICE

SUITE 1155 • THE NATIONAL PRESS BUILDING • WASHINGTON, D.C. 20045
TEL: (202) 628-2044 • FAX: (202) 628-2042 • EMAIL: Carl@Radio.COM

Mr. Lehman

cc: OLCIA

Access Comm
August 4, 1995

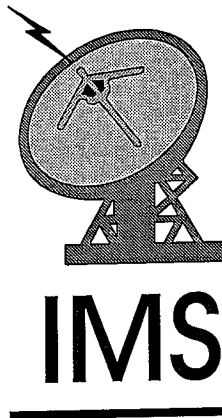
Read Aloud

See for Dennis Khan

A really like a report in this

35-

Time?



America and has received the strong support of the Clinton administration. The law reads:

"(d) With respect to information dissemination, each agency shall--

"(1) ensure that the public has timely and equitable access to the agency's public information, including ensuring such access through--

"(A) encouraging a diversity of public and private sources for information based on government public information;

"(B) in cases in which the agency provides public information maintained in electronic format, providing timely and equitable access to the underlying data (in whole or in part); and

"(C) agency dissemination of public information in an efficient, effective, and economical manner;

In case there is any doubt, the committee reports go on to stress that information dissemination is an "integral part of the information life cycle," and emphasize that the purpose of the law is to "enunciate clearly the obligation of Federal agencies to ensure effective public access to government information."

Many of us have learned from the last two years of this demonstration project. It has been remarkable to see how large a portion of the American public has interest in these key documents. It has also been remarkable to see the advances in technology that allow dissemination to all members of the public a realistic and cost-effective goal. We hope you will embrace both the spirit and the letter of the laws recently passed by the Congress and signed by the President and that you will ensure that Patent data remains available on-line and does not get auctioned off to the highest bidder. We look forward to seeing your Internet service and will continue to be available to your staff as you make this important transition to the information age.

Sincerely,

A handwritten signature in dark ink, appearing to read "Carl Malamud".

Carl Malamud

cc: Vice President Gore
Hon. Ron Brown, Secretary of Commerce
Ms. Sally Katzen, Office of Management and Budget

Hon. Newt Gingrich, Speaker of the House
Hon. Robert Dole, Majority Leader of the Senate
Hon. Connie Mack, Republican Conference Secretary
Hon. Thomas Daschle, Minority Leader of the Senate
Hon. Richard Gephardt, Minority Leader of the House

FACSIMILE TRANSMISSION

PTO
cs: Access
Comm
1995 JAN -4 P 4:31

Please deliver this facsimile to:

ronald brown
pto

From: Stanton McCandlish
Date: Wed, 04 Jan 1995 12:14:00 EST
Subject: PTO has no business meddling with Malamud's patent library

To: remote-printer.Ronald_Brown/PTO@6.7.5.4.2.8.4.2.0.2.1.t
c.int
cc: mech@eff.org
Message-Id: <199501041714.MAA22835@eff.org>
X-EFF_Membership_Queries_To: membership@eff.org
X-EFF_General_Info: info@eff.org
X-URL: <http://www.eff.org/-mech/mech.html>
X-PGP: support the Phil Zimmermann legal defense fund (email d
bois@csn.or
g)

.....
PUBLIC SERVICE ANNOUNCEMENT

THINK GLOBALLY.



ACT LOCALLY.

According to Carl Malamud of the Internet Town Hall project, which until recently provided patent information on the Internet:

The U.S. Patent and Trademark Office has formally objected to our distribution of the full text of patent documents on the Internet. They believe that our distribution of patent documents undermines their ability to maintain a viable market for patent documents.

Gregory Aharonian says it best in the latest issue of Internet Patent News:

"I am sorry, but the government should not be picking winners and losers in the marketplace. It has a long history of doing so very poorly, and a long history of trying to alter the natural evolution of new technologies. Besides, you would think the PTO, as part of the COMMERCE DEPARTMENT, would realize that there are tons of unexploited technologies residing in US patents that entrepreneurs and venture capitalists could identify and bring to market, creating a much larger economic activity than the aggregate sales by parasitic providers of patent information. We are talking hundred million dollar companies, thousands of new jobs, positioning in the global markets by US companies, etc...I would strongly suggest to the Commissioner that he hold a hearing on the PTO and the Internet. This is too important of an issue for the public not to be able to make its feelings and desires known."

My thoughts exactly. The government is not in the business of being in business, but in the business of governing. PTO has no business whatsoever meddling with Malmud's provision of patent information online, and their concerns about "maintain[ing] a viable market for patent documents" is misplaced. Government agencies do not maintain markets, market economics maintain markets, and the market economics of the 1990s are leaning heavily toward online access. It is not the PTO's place to bolster old-time, obsolete would-be monopolists. If their time is up, it is up. Nor is it the PTO's place to attempt to stifle the development of new markets and new commerce strategies. It is in fact directly counter to the purpose of the PTO. The PTO needs to get out of bed with Mead, Dialog, EDS, etc. and stop prostituting itself.

I find the PTO's actions in this case to be shameful and against the public interest - this is not how the PTO is supposed to behave. It's not how ANY government agency is supposed to behave.

PS: PTO also needs very badly to hold public hearings on algorithm patents. To my knowledge, the US the only place in the world these are valid, and their existence has already wrecked the domestic security software market, and is well on the way to wrecking the US data compression market. I have a strong suspicion that the public (remember them? your employers?) does not feel that allowing patents on facts of mathematics - essentially granting ownership of properties of nature - is appropriate or useful, and many of us feel, and can demonstrate, that algorithm patents are in fact greatly *harming* US and international commerce.

Stanton McCandlish, Electronic Frontier Foundation.

[Affiliation provided for identification purposes only; this is NOT an official EFF statement.]

--
 Stanton McCandlish
<HR> mech@eff.org
<P> Electronic Frontier Fndtn.
<P> Online Activist

Buffer 1. Txt

To: Ron Brown@Admin@OSEC
Cc:
Bcc:
From: C=US/A=INTERNET/DDA=ID/nobody(a)town.hall.org
Subject: U.S. Patent Database
Date: Wednesday, November 2, 1994 at 8:56:31 am EST
Attach: smtp5912.484
Certify: N
Forwarded by:

carl@radio.com (Carl Malamud) sent the following
comment Secretary Ronald Brown

Dear Secretary Brown:

I think the U.S. Government should be taking more active
steps to put the Patent and Trademark Office on-line.
Current glacial steps forward are inching us into same
day service in a nanosecond world. It's time to make
the U.S. Government databases available to the U.S.
public using the Information Superhighway.

Regards,

Carl Malamud
Internet Multicasting Service

Server protocol: HTTP/1.0
Remote host: trystero.radio.com
Remote IP address: 192.101.98.3

These people can
be reached via their
e-mail address (which
can be found in the
letter's header).

C859039

To: CommOSECMTA@OSECServer16@Servers [S=vice.president/C=US/A=INTERNE
esident(a)whitehouse.gov], William M. Daley@Admin@OSEC =
Cc:
Bcc:
From: S=JLE2/C=US/A=INTERNET/DDA=ID/JLE2(a)aol.com
Subject: Response to Carl Malamud Email Letter of April 27, 1998
Date: Sunday, May 17, 1998 20:19:18 EDT
Attach: MESSAGE1.TXT, SMTP.HDR
Certify: N
Priority: Normal
Defer until:
Expires:
Forwarded by:

A long message has been sent as an enclosure...

OS EXECUTIVE SECRETARIAT
1998 MAY 19 PM 4:38

TO: Vice President Al Gore, The White House

cc: The Hon. William M. Daley, Secretary of Commerce
The Hon. Bruce A. Lehman, Assistant Secretary of Commerce and
Commissioner of Patents and Trademarks
The Hon. Q. Todd Dickinson, Deputy Assistant Secretary of Commerce and
Deputy Commissioner of Patents and Trademarks

FM: Coalition for Patent and Trademark Information Dissemination, Joseph L.
Ebersole, Counsel

Subj: Response to Letter from Carl Malamud Re Patent and Trademark Databases
On-Line

Date: May 17, 1998

Dear Mr. Vice President:

Carl Malamud's letter of April 27, 1998 specifically recommends that PTO provide free access to raw historical and current patent data on an FTP site. While at first impression an attractive proposition to all companies who currently purchase raw patent data from PTO, the proposal is blind to four factors which impact this attractiveness.

First, Carl erroneously asserts these databases are treated as "government profit centers." They are not! In fact, PTO complies with OMB Circular A-130 and the Paperwork Reduction Act, which establish cost-of-dissemination as the guide for user fees. PTO's fees for raw patent and trademark data are based on the cost of making copies. If these costs were not covered by such user fees, patent and trademark applicants' fees would have to be increased to cover them.

However, we agree with Carl that provision of raw patent and trademark data via an FTP site should be studied by PTO. Indeed, patent information companies have also been pressing PTO to consider an FTP site. It is possible this would be less costly for PTO so that purchase fees could be significantly reduced. Since such a site would be completely for dissemination purposes, its development as well as operating costs would have to be covered as costs-of-dissemination. The extent to which this might cause second thoughts on the proposal remains to be seen.

Second, Carl asserts that: "...we hide the documents that define (intellectual property)." Nothing could be further from the truth. As a matter of fact, PTO has the most effective information dissemination system of any government agency in the U.S. or elsewhere. It indeed fulfills the

Paperwork Reduction Act goal of encouraging a diversity of sources. PTO provides patent and trademark data on CD-ROM products; it provides a paper copy service; and it provides a number of agency files and databases via the Internet. PTO's Web site includes the PatBib service which provides free access to twenty years of patent bibliographies and abstracts. But its most effective means of reaching the maximum number of potential users is through its bulk raw data service, which is purchased by 28 organizations as fuel for private sector patent information services. These services then provide patent information to users throughout the world.

Three private sector services already provide free searching of patent bibliographic or full text data. Anyone -- college students, senior citizens, or young researchers -- can use them for searching. All free patent search services (both government and private) do charge for copies of a complete patent, whether such copies are downloaded, faxed, or delivered in paper form, and that part of the service helps pay for the free searching.

Third, if PTO were to plan for an FTP site, this would have to include determining how to establish equitability and fairness for all those who have already purchased historical patent data. As of this year, buying the historical data will require over \$300,000 for patent images, and over \$150,000 for patent text. A number of companies have already made these investments. It would be unfair to suddenly let others obtain this data free, unless the purchase funds were first returned to those companies, or some other equitable step were taken.

Fourth, the magnitude and costs of operation for patent data search services are much different from other types of government data. Patent data volume, as of May 5th, is running at an annual rate of over 150 Gigabytes. Patent search databases, to be useful, have to carry many years of data. Patent historical files now total approximately 3 Terabytes of information. One small company who started into business several years ago reported that the facilities and equipment costs alone to start their patent search service were over one million dollars. If the data were free, this amount would not change. Any organization that seriously wants to provide a real patent information service has to conduct extensive planning studies before making such an investment. Storing 3 Terabytes takes a major investment. (One can get a sense of how much this represents by comparison with a well-known high technology company. For example, Steve Jobs, in a recent speech bragged that his Pixar Animation Studios had a total of 5 Terabytes of storage.) Thus, patent historical files represent daunting volume.

In spite of these concerns, Coalition members support evaluation of an FTP site by PTO. Providing raw data for fast downloading will speed up information dissemination; and Carl Malamud is correct in observing that making data more readily available can provide the basis for additional

creative uses of patent data. The Coalition believes it may be possible to work out an equitable basis for some type of dissemination via an FTP site and would be happy to discuss the relevant issues.

We should add that we do not believe it is possible to work out an equitable basis for a full text search service on the part of PTO. This would be anathema to all organizations who have made major investments in patent data over the years, and especially to the small new patent information companies who have sprouted in the 1990s as a result of the current enlightened PTO policies. It would amount to a betrayal of the premises upon which whole new businesses have been based. Thus, we think Carl Malamud (as opposed to Commissioner Lehman, whose comments reported in the New York Times were that he would like to provide a full-text service if he had the funding) is on the right track. The problem will be working out an equitable method for funding and charging for use of an FTP site.

C858768

OS EXECUTIVE SECRETARIAT

1998 MAY -6 PM 12:50

To: CommOSECMTA@OSECServer16@Servers[S=vice.president/C=US/A=INTERNET/DDA=ID/vice.president(a)whitehouse.gov]
Cc: William M. Daley@Admin@OSEC, CommOSECMTA@OSECServer16@Servers[S=brennand/C=US/A=INTERNET/DDA=ID/brennand(a)SLU.EDU]
Bcc:
From: S=hagenpa/C=US/A=INTERNET/DDA=ID/hagenpa(a)SLU.EDU
Subject: Patents and Trademarks Should Be On-Line
Date: Tuesday, May 5, 1998 16:04:56 EDT
Attach: SMTP.HDR
Certify: N
Priority: Normal
Defer until:
Expires:
Forwarded by:

Dear Vice President Gore:

I agree with Carl Malamud's argument for putting the full text of U.S. patents on the Internet. It would help our researchers immensely, and would assist the University in developing good technology transfer strategies.

In making technology transfer decisions within the institution, it is important to have access to as much information as possible in order to keep institutional costs in sharing University technology to a minimum. Information on existing U.S. patents would serve to facilitate technology transfer, economic development, and research choices.

I urge you and Secretary Daley to consider Carl Malamud's proposal and help researchers, students, small and large businesses, and University technology transfer officials with access to the information they need.

Thank you for your consideration.

Sincerely,
Patricia Hagen
Director, Office of Research Services
Saint Louis University
St. Louis, Missouri
314-977-2241

CP58765

OS EXECUTIVE SECRETARIAT

To: CommOSECMTA@OSECServer16@Servers[S=vice.president/C=US/A=INTERNET/DDA=ID/vice.president(a)whitehouse.gov]
Cc: William M. Daley@Admin@OSEC
Bcc:
From: S=robert.reese/C=US/A=INTERNET/DDA=ID/robert.reese(a)mindspring
Subject: Patents and Trademarks Should Be On-Line
Date: Monday, May 4, 1998 22:24:30 EDT
Attach: SMTP.HDR
Certify: N
Priority: Normal
Defer until:
Expires:
Forwarded by:

Dear Mr. Vice President,

I wish to voice my support for the inclusion of the Patent and Trademark databases on the Internet. I am a student, a programmer, an IS/IT professional, and an inventor. The information in the PTO's databases is what the whole "Exchange of Information" is all about. I cannot think of a more suitable and worthy cause for the freedom of information, speech, and innovation. I ask that you please consider the proposal laid forth by Mr. Malamud in his letter dated 27APR98 with the utmost seriousness.

Sincerely,

Robert W. Reese
robert.reese@mindspring.com

"Just Imagine..."

0858767

To: OS EXECUTIVE SECRETARIAT
CommOSECMTA@OSECServer16@Servers[S=vice.president/C=US/A=INTERNET/DDA=ID
/vice.president(a)whitehouse.gov] 1998 MAY -8 PM 12:04
Cc: William M. Daley@Admin@OSEC
Bcc:
From: S=stuart/C=US/A=INTERNET/DDA=ID/stuart(a)unidev.com
Subject: Patents and Trademarks Should Be On-Line
Date: Monday, May 4, 1998 17:15:02 EDT
Attach: SMTP.HDR
Certify: N
Priority: Normal
Defer until:
Expires:
Forwarded by:

Dear Mr. Vice President:

As a small business person, I recently needed to look up my new corporation name in order to make sure that I could register it safely without worry that I might, at some time in the future have to change our corporation name. I found to my chagrin that there was no way for me to access this large database without either physically going to our states capital or paying a trademark lawyer greater than \$1500 to research and register our name. No phone call would do, nor letter, nor e-mail. This is truly a sad state of affairs, especially when our country has made such inroads to complete electronic commerce. I understand that Carl Malamud has written a letter, asking you to initiate an online service that would house all patent and trademark data, available for free, to anyone who would want and or need it. I can't explain how much good this would do. For every person thinking of starting a business, for ever inventor, thinking of a product that they believe the world must have, this service would be a boon. To truly embrace the information age, as you purport that you do, we must throw away the idea that certain information is only for the few who can afford it. The cost to such a project would be nominal, and the value infinite. The question is, will you put this database resource online?

Sincerely,

Stuart Horner
Core Communications, Inc.

President

In re: Patent and Trademark Databases On-Line

- As part of its efforts to promote awareness of and provide effective access to patent and trademark information, the Patent and Trademark Office (PTO) provides free access to a broad assortment of patent and trademark information through its Internet Web site. The PTO established its original presence on the Internet in 1991. The first data base to be made available contained patents relating to AIDS research (full text and facsimile images). In November 1995, the PTO inaugurated PatBib, a bibliographic data base of patent information that begins with patents issued in 1976 and that provides patent information including the text of the patent abstract.
- The Internet has been a significant force in changing how the PTO can make patent data available to the public, and we plan to make additional patent and trademark data available on the Internet this year. As with all planned enhancements to our product offerings, we will consider our currently available resources. During Fiscal Year 1999, we plan to enhance our current Internet offerings by adding searchable trademark data and access to status information for patents and trademarks. We will also focus on using the Internet to enhance on-line access to our data bases from the 83 Patent and Trademark Depository Libraries (PTDLs) located throughout the country.
- The PTDLs are a national resource for providing patent and trademark information in a readily accessible manner in every state in the nation. On-line access to our trademark search database, X-Search, is available for a fee at Partnership PTDLs in Detroit, Michigan, and Sunnyvale, California. On-line access to our patent full-text search system is available in 31 PTDLs, and on-line access to our patent image data base is available in our two Partnership PTDLs through high-speed, dedicated communications facilities. Our newest Partnership PTDL in Houston, Texas, will be operational June 1 for both X-Search and patent image data base.
- As for providing access to the entire patent data base, both full text (available in electronic form beginning in 1971) and full images (available as facsimile image data for over 6 million U. S. patents), we will continue to offer public access in our Public Search Facilities in Arlington Va., and our PTDLs throughout the country. This level of access is consistent with current resources and technology. Specifically, the costs involved for providing Internet access to patent images are substantial, and would require diversion of resources and system availability from our examining operations. Additionally, image data would continue to be difficult to "search" since retrieval is possible only by patent number or U.S. Patent Classification prior to 1976. Delivery of large amounts of image data over the Internet, while technically feasible, is not operationally or economically feasible at this time

because of the high bandwidth requirements of image data and the cost of replication of databases outside the PTO firewall.

- In providing patent and trademark data to data base vendors and other members of the public, the PTO recovers only the cost of dissemination in accordance with OMB Circular A-130 and the Paperwork Reduction Act of 1995. We believe that private sector vendors are a vital factor in disseminating patent data. However, due to technology changes, such as the availability of the Internet, we no longer have to rely entirely on private industry to provide for the basic access to the data as we once did. We have found that our Internet offerings set the minimum standard for commercial offerings. We believe that our presence on the Web has enhanced the market for the private sector by raising public awareness and improving ease of access and, hence, increasing demand for value-added products (measured from our baseline) which we rely on the private sector to provide.
- In a recent meeting of the Trademark Advisory Committee, there was unanimous agreement that the cost of providing Trademark data on the Internet should be borne by users of that data and not by Trademark applicants.
- Note that PTO is a fully user fee funded organization that does not rely on taxpayer funds.
- Mr. Malamud has exaggerated the impact of his 1994 Internet offering. He did not, for example, offer the full text of all patent documents. Rather, he loaded only about two years worth of data. Also, the PTO did not object to his putting the data on the Internet; we encouraged it.

Bryant, Vickie

From: Kunin, Steve
To: Huther, Brad; Stoll, Robert; Kirk, Michael
Cc: Bryant, Vickie; Maddox, Georgia; Coleman, Anne
Subject: FW: Aharonian Retracts "Diatribes" (Internet newsgroup message)
Date: Friday, January 06, 1995 7:36AM
Priority: High

FYI

From: Goldberg, Howard
To: Larkins, William
Cc: Kunin, Steve
Subject: RE: Aharonian Retracts "Diatribes" (Internet newsgroup message)
Date: Thursday, January 05, 1995 10:54AM
Priority: High

Thanx for all of the NET data. I pass all of your communications on the AC and DACs.

Thanx

From: Larkins, William
To: Goldberg, Howard; Maullsby, Richard
Subject: Aharonian Retracts "Diatribes" (Internet newsgroup message)
Date: Thursday, January 05, 1995 7:40AM

Yesterday I forwarded an Internet newsgroup message (also reposted on CompuServe's IDEAS & INVENTIONS Forum) from Greg Aharonian entitled "PTO Shuts down an Internet patent search site."

Last night I found the following followup message in the Internet newsgroup from Aharonian on the subject.

=====

From:
news1.digex.net!news2.digex.net!howland.reston.ans.net!europa.eng.gtefsd.com!uhog.mit.edu!bloom-beacon.m
t.edu!world!srctran Wed Jan 4 17:45:41 1995
Newsgroups: misc.int-property,misc.legal.computing,alt.culture.internet
Path:
news1.digex.net!news2.digex.net!howland.reston.ans.net!europa.eng.gtefsd.com!uhog.mit.edu!bloom-beacon.m
t.edu!world!srctran
From: srctran@world.std.com (Gregory Aharonian)
Subject: PATNEWS: PTO did NOT shut down an Internet patent serch site
Message-ID: <D1wCEI.8ws@world.std.com>
Organization: The World Public Access UNIX, Brookline, MA
Date: Wed, 4 Jan 1995 19:49:30 GMT
Lines: 175
Xref: news1.digex.net misc.int-property:7082 misc.legal.computing:9767 alt.culture.internet:6595

!19940104 PTO did NOT shut down an Internet search site, but

This morning I sent out a patent news story about how the PTO shut down an Internet patent search site. Well, my phone has been off the hook all morning with people trying to clarify this issue. LAST TIME I WRITE A DIATRIBE :-)

So here is what I learned (along with some more diatribe - I just never learn). During 1994, Carl Malamud at town.hall.org has been supplying the full text to all US 1994 patents searchable by WAIS. He also supplies a wide variety of other databases, especially the SEC EDGAR data that he had to fight to do things with.

For some time, Carl has been trying to organize an effort to put the full text to all of the US patents since 1970 onto the Internet (I suppose in competition with my efforts to do so - a competition I would be glad to lose to Carl, though I wish he had asked me to join in to help with the Boston site). Recently he announced that he has gotten support from MIT, NYU, SUN, MCI, R.R. Donnelley & Sons, and Time Incorporated to do so. Two sites with full Internet access (one in Virginia and one at MIT) and 200 gigabytes of disk space are being supported and established. Other than some more disk space, all that is left is to acquire/buy the full patent text data. It is here that the my story (and first posting) gets very murky and political.

According to Carl, he had asked Commissioner Lehman for the PTO to donate the patent text data to his efforts. At first, the Commissioner agreed to do so. But for some reason (which I will speculate on below), the Commissioner then changed his mind and denied Carl's access for free access to the PTO data. To play politics, Carl then shut off access to his 1994 patent text database for two weeks, which I then publicized this morning.

So I retract what I said. The PTO has no intentions of stopping anyone from doing whatever they want with patent data, but the PTO will not donate any of its databases to free efforts. The PTO is not trying shut down such efforts, so I was wrong about that aspect of this issue. Carl's shut down was of his own volition.

Why did the Commissioner change his mind? I do not know, but let me speculate. As I see it, the PTO probably has any of the following concerns: lost income, accuracy, original overhead and Congressional taxes on their fees.

1) CONGRESSIONAL TAXES

Unqie amongst most government agencies is that the PTO is self-supporting as it funds its operations off of the patent fees we all pay. Except.Except that all of our fees first go through the US Treasury, and then Congressional appropriation committees and then to the PTO. It seems a few years ago, the Congressional committees overseeing the PTO and other agencies decided to "pool" all of their monies together and then reappropriate money, using the pool to hide their transferring money from one agency to another. The net effect of this on the PTO is that not all of the money the PTO derives from fees goes to funding PTO operations - some is sent to other agencies. While the PTO had been able to adapt to a fixed "taxed" off the top, it suffered from a few random extra grabs from Congress that screwed up PTO plans.

So I am utterly sympathetic to PTO officials trying to run the PTO without knowing how much of their income will be appropriated elsewhere. So I am not surprised if from time to time the PTO plays politics with issues like access to the PTO patent text files to gain more leverage with Congress to get more of its monies. And personally, I think that not only should the PTO get all of its fee monies, but Congress should throw in an extra 25% from general tax monies. The patenting process and community is too important to this country

to be self funding (as compared to other Government funded activities with much more dubious returns).

So I suspect the Commissioner is engaging in a little politics by turning down Carl's request, especially with blabbermouths like me around to stir up things.

2) LOST INCOME

The PTO currently is selling about 10,000 copies of patents each business day, grossing about \$6,000,000 a year, and probably netting a few million each year. Additionally, it will be making about \$1,000,000 a year selling the full text and images of new patents (to about 50 patent information providers). The PTO knows that not only are there efforts like Carl's to provide free access to patent text, but there are also others working to provide both text and images to the public over the Internet and other modes at costs equal to or less than what the PTO charges. For example, I have had rumors that Microsoft is developing its own patent database that probably will be part of its Internet online service, and we all know how cutthroat with prices Microsoft can be. You can all figure that sometime in 1995 someone will be selling fulltext and images of US patents over the Internet somewhere in the range of \$2 to \$4 a piece, if not less (especially text for free).

The PTO knows (or should know) that it can't stop these trends. However given the potential losses of income that the PTO could experience, I would not be surprised that the PTO isn't overly thrilled about such activities (though probably more thrilled that Dialog et.al.). While it can't do anything to stop such activities, it doesn't have to support them, since it is not under any obligation to do so.

So I suspect someone at the PTO might have pointed this out to the Commissioner after he agreed to provide the data to Carl, so he changed his mind.

3) ACCURACY

There are some at the PTO who argue that public efforts like Carl's and mine that provide free access to patent data over the Internet will suffer from accuracy problems. Maybe the Commissioner turned down Carl's request because it might have created an implied liability for the PTO if Carl's operation introduced errors into the patent data.

Let me say this about accuracy. First, people on the net know that free things should be treated a tad skeptically for that very reason. But so warned, people can continue without any problems. If they find something interesting or questionable, most will figure to order a paper copy just to make sure. Second, we don't make any more mistakes than the PTO does. This charge has been hurled at my Internet site and I don't like it.

But I would not be surprised if the Commissioner felt there might be an implied liability if the PTO donated data to Carl's effort and so backed off.

4) OVERHEAD

The PTO spends many millions of dollars having pieces of paper with patent information converted into machine readable form. It could somewhat justify its actions at not providing free patent data by arguing that it has to recover some of the costs to prepare the data. Sure OMB A130 says the PTO has to do so reasonably, but A130 is worded too loosely to be used by amateur citizens. Why should it be unfair for the PTO to ask for fees for patent data that reflects these costs?

It isn't, but it doesn't help for the PTO to send out conflicting signals. Until quite recently, it cost about \$2000 a year to subscribe to the PTO to receive on magnetic tapes the full text to new patents each week, and \$6000 to receive the images each week, kind of a cost recovery pricing scheme to just cut the magnetic tapes that are sent out. Now under a fair value pricing scheme, the PTO is charging about \$6000 a year for patent text and \$18,000 for patent images.

Thus for example, it will cost Carl \$120,000 to buy all of the patent text since 1970, which is why he asked to the PTO to donate to his efforts. The question is: are these price levels unreasonable? Who knows, as it involves PTO budgets and Congressional meddling. But looking at PTO calculations for their pricing of APS access by the patent depositories, I think there are ways that the PTO can operate with their patent data that are less costly by making better use of existing technology.

But the PTO (or more accurately patent applicants) pays for preparing the data originally, so it deserves some compensation for that as long as it is a self supporting agency.

=====

What does all mean? Despite his politicking, Carl will probably succeed one way or another in getting the full text to US patents since 1970 onto the Internet for free access. The data either will be donated by the PTO, bought from the PTO, bought from a private supplier, or donated by a private supplier. It is just not that fundamentally difficult of a problem.

Despite its politicking, the PTO is going to have to adjust its operations to reflect the Internet, and face a future of decreasing revenues from the sales of patent information. I suppose if Congress provides the lost income, the PTO wouldn't care, since it has more important things to do than being in the business of selling patent data.

And despite their contrived rationalizations, patent data providers like Dialog will see the sales of raw patent data vanish over the long term.

But about my original posting that the PTO acted to shut down Carl's Internet patent searching site, I was wrong.

Greg Aharonian
Internet Patent News Service
For subscription info, send 'help' to patents@world.std.com)
For prior-art search services info, send 'prior' to patents@world.std.com)
For WWW patent searching, try <http://sunsite.unc.edu/patents/intropat.html>)